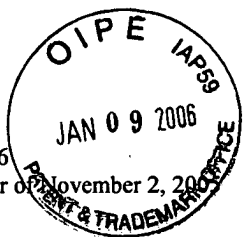


Appl. No. 09/766,275

Reply Dated January 3, 2006

Reply to Examiner's Answer of November 2, 2005



PATENT APPLICATION

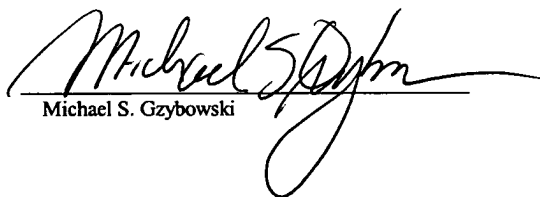
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group }
Art Unit: 1771 }
Attorney }
Docket No.: 121027-040 }
Applicant: Toshio KOBAYASHI et al. }
Invention: ELASTICALLY STRETCHABLE }
COMPOSITE SHEET AND PROCESS FOR }
MAKING THE SAME }
Serial No: 09/766,275 }
Filed: January 19, 2001 }
Examiner: Jennifer Boyd }

Certificate Under 37 CFR 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner of Patents, Washington, D.C. 20231

on January 3, 2006


Michael S. Gzybowski

REPLY BRIEF

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Examiner's Answer mailed November 2, 2005 in connection with the above-identified application, appellants submit the following reply.

On pages 6 and 7 of the Examiner's Answer the examiner has attempted to strengthen her position as to why it would have been obvious – in view of the prior art or record – to:

...create the elastic material comprises ethylene/propylene copolymer containing ethylene at 0.5 - 10% by weight, ethylene/propylene/butene containing ethylene at 0.5

– 10% by weight and butene at 0.5 – 15 % by weight, or a mixture thereof at 100 – 10% by weight as required by claim 1.

There is agreement on the record that neither Morman nor Strack teaches this particularly claimed range nor provides any motivation for such a range. That is, the examiner has now indicated that the claimed range is obvious on the basis of optimizing the components and their weight percentages.

The examiner has relied upon Morman as teaching:

Non-elastic materials are nonwovens made of polyolefins and similar polymers including ethylene copolymers, propylene copolymers and butene copolymers (column 4, lines 44-64). Morman teaches that necked material can also comprise polypropylene (column 7, lines 1-10). Morman notes that the neckable material can comprise a mixture of two or more fibers (column 7, lines 30-35).

From this the examiner expressly concludes:

Therefore, in one embodiment, fibers can comprise ethylene/propylene/butene copolymers as one fiber type and polypropylene as another fiber type. (Underlying added)

And the examiner further concludes that:

It would have been obvious...to create the elastic material comprises ethylene/propylene copolymer containing ethylene at 0.5 - 10% by weight, ethylene/propylene/butene containing ethylene at 0.5 – 10% by weight and butene at 0.5 – 15 % by weight, or a mixture thereof at 100 – 10% by weight as required by claim 1.

Morman teaches:

The neckable material 12 may be a nonwoven material such as, for example, spunbonded web, meltblown web or bonded carded web. If the neckable material is a web of meltblown fibers, it may include meltblown microfibers. The neckable material 12 may be made of fiber forming polymers such as, for example, polyolefins. Exemplary polyolefins include one or more of polyethylene, polypropylene, polybutylene, poly(methyl pentene), ethylene copolymers, propylene copolymers, and butylene copolymers. Useful polypropylenes include, for example, polypropylene available from the Himont Corporation under the trade designation PC-973, polypropylene available from the Exxon Chemical Company under the trade designation Exxon 3445, and polypropylene available from the Shell Chemical Company under the trade designation DX 5A09.

From this the examiner concludes that an apparent "obvious" teaching in Morman is an "embodiment" in which the "fibers can comprise ethylene/propylene/butene copolymers as one fiber type and polypropylene as another fiber type."

From this the examiner goes further and concludes that the specific percentages of the ethylene in the ethylene/propylene copolymer and ethylene and butene in the ethylene/propylene/butene are obvious.

The examiner's basis is that it would be obvious to adjust the ethylene in order to obtain a composition that "will exhibit properties more like ethylene."

The record is completely devoid of what "ethylene like properties" the examiner is basing the obviousness rejection on and how such properties provide a benefit to the combination of Strack in view Morman to a degree the meets the obviousness standard of 35 U.S.C. §103.

In the Examiner Answer the examiner now seems to emphasize that the obviousness of the weight percentages of the components is "a result of optimization absent any evidence to the contrary."

The examiner cites *In re Peda* (159 USPQ 342, 244 (CCPA 1968)).

As explained in MPEP §2144.01, *In re Peda* involved a process for catalytically producing carbon disulfide by reacting sulfur vapor and methane in the presence of charcoal at a temperature of "about 750-830°C." The court of appeals found that this range was met by a reference which expressly taught the same process at 700°C because the reference recognized the possibility of using temperatures greater than 750°C. The reference disclosed that catalytic processes for converting methane with sulfur vapors into carbon disulfide at temperatures greater than 750°C (albeit without charcoal) was known, and that 700°C was "much lower than had previously proved feasible."

It is not at all clear how the examiner is relying upon *In re Peda* because the examiner concedes that the prior art of record does not teach appellants' specific component polymers, let alone the weight percentages of the ethylene and butene.

In re Peda might apply if the prior art taught or recognized the possibility of using appellants' specific component polymers, and the weight percentages of the ethylene and butene.

However, the prior art fails to do so.

Accordingly, the examiner's reliance on the holding in *In re Peda* is in error.

On page 7 of the Examiner's Answer the examiner states that:

In the present invention, one would have been motivated to optimize the amounts of ethylene or the amounts of ethylene and butene in order to have an optimally strong and resilient composite web depending on the desired end use.

However, the examiner has failed to point out any teaching in the prior art as to the relationship between strength and resiliency and the percentages of ethylene and butene.

The Examiner has stated:

If the claimed ranges have unexpected results, the burden is upon the Appellant to demonstrate that the claimed ranges are not a matter of simple optimization.

The undersigned submits that the teachings of the prior art fail to sufficiently rise to a level of obviousness that requires appellants to present a showing of unexpected results.

That is, an applicant is only required to provide a showing of unexpected results when the prior art differences between the prior art and a claimed invention are only distinguishable based upon differences in properties of the two. (See MPEP §716.02)

In the present situation, there is no prior art teaching that is at all comparable to appellants' claimed invention, including the specific components of the thermoplastic synthetic fiber and the weight percentages of the components.

CONCLUSION

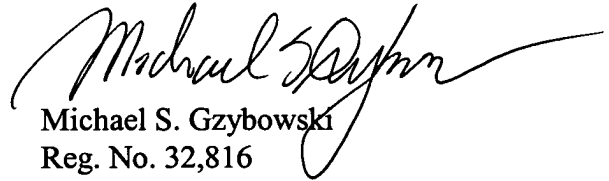
For the reasons advanced in appellants' Brief on Appeal and the reasons advanced above, Appellant respectfully contend that the rejection of claims 1-3 and 7 as being obvious under 35 U.S.C. §103(a) over Morman is improper because the examiner has not met the burden of establishing a *prima facie* case of obviousness.

Reversal of the rejection on appeal is respectfully requested.

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To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,



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